Supreme Court, U.S.
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No. 92-479

In The

Supreme Court of the United States

October Term, 1992

TXO PRODUCTION CORP.,

Petitioner,

v.

ALLIANCE RESOURCES CORP.,
THE TUG FORK LAND COMPANY GEORGE KING,
and GROVER C. GOODE,

Respondents.

Petition For A Writ Of Certiorari To The Supreme Court Of Appeals Of West Virginia

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether TXO waived its right of review under the factors set forth by the West Virginia Supreme Court of Appeals in *Garnes v. Fleming Landfill, Inc.*, 413 S.E.2d 897 (W.Va. 1991) by its failure to address the *Garnes* factors on appeal.

2. Whether TXO sufficiently presents a retroactivity question before this Court under *James B. Beam Distilling Co. v. Georgia*, 111 S.Ct. 2439 (1991) when TXO failed to rely upon *James Beam* before the West Virginia Supreme Court of Appeals.

3. Notwithstanding TXO's failure to address the procedural factors required by the West Virginia Supreme Court of Appeals in *Garnes v. Fleming Landfill, Inc.*, 413 S.E.2d 897 (W.Va. 1991) and to raise the retroactivity question presented in *James B. Beam Distilling Co. v. Georgia*, 111 S.Ct. 2439 (1991), TXO received the benefits of sufficient procedural and substantive review to satisfy due process.

4. Whether the award of punitive damages against TXO by the jury in accordance with West Virginia procedures limiting jury and judicial discretion, considering the gravity of the wrong, the need to punish, and the need to deter similar wrongful conduct, afforded TXO procedural and substantive due process under the Fourteenth Amendment of the United States Constitution.

PARTIES TO THE PROCEEDINGS

Pursuant to Rule 29.1 of the Rules of this Court, respondents Alliance Resources Corp., and Tug Fork Land Company have no parent, subsidiary or affiliated corporations or companies. George King and Grover C. Goode are individuals.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
TABLE OF AUTHORITIES	iv
STATEMENT OF FACTS	2
REASONS WHY THE PETITION SHOULD BE DENIED	2
CONCLUSION	16

TABLE OF AUTHORITIES

Page

CASES

Arizona v. Fulminante, 111 S.Ct. 1246 (1991)..... 15

Bacchus Imports, Ltd. v. Dias, 468 U.S. 263, 104 S.Ct. 3049, 82 L.Ed.2d 200 (1984)..... 4

Bankers Life & Casualty Co. v. Crenshaw, 486 U.S. 71, 108 S.Ct. 1645, 100 L.Ed.2d 62 (1988) 3

Bradley v. Appalachian Power Co., 256 S.E.2d 879 (1979)..... 5

Browning-Ferris v. Kelco Disposal, 492 U.S. 257, 109 S.Ct. 2922, 106 L.Ed.2d 219 (1989) 5

Cash v. Beltmans North America Co., Inc., 900 F.2d 107 (7th Cir. 1990)..... 11

Crowell v. Randell, 10 Pet. 368, 9 L.Ed. 458 (1836) 3

Eichenseer v. Reserve Life Ins. Co., 934 F.2d 1377 (5th Cir. 1991) 10, 11, 12

Garnes v. Fleming Landfill, Inc., 413 S.E.2d 897 (W.Va. 1991)..... *passim*

General Motors v. Johnston, 592 So.2d 1054 (Ala. 1992)..... 12

Glasscock v. Armstrong Cork Co., 946 F.2d 1085 (5th Cir. 1991), *cert. denied*, 112 S.Ct. 2439 (1991)..... 9

Great Northern Railway v. Sunburst Oil & Refining Co., 287 U.S. 358, 53 S.Ct. 145, 77 L.Ed. 360 (1932)..... 5

Hess Oil Virgin Island Corp. v. HOVIC, Amerada Hess Corp., ___ F.2d ___, 1992 WL 228875 (3rd Cir. September 19, 1992)..... 9, 11, 12

TABLE OF AUTHORITIES – Continued

Page

Hilgedick v. Koehring Finance Corp., 8 Cal.Rptr.2d 76 (Cal. App. 1 Dist. 1992) 10, 12

Hospital Authority of Gwinnett Co. v. Jones, 261 Ga. 613, 409 S.E.2d 501 (1991), *cert. denied*, 112 S.Ct. 1175 (1992)..... 12

Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983)..... 3

James B. Beam Distilling Co. v. Georgia, 111 S.Ct. 2439 (1991)..... 3, 4, 5

Las Palmas Assoc. v. Las Palmas Center, 1 Cal.Rptr.2d 301 (Cal. App. 2 Dist. 1991)..... 10

McGoldrick v. Compagnie Generale Transatlantique, 309 U.S. 430, 60 S.Ct. 670, 84 L.Ed. 849 (1940) 3

MGW, Inc. v. Fredricks Development Corp., 6 Cal.Rptr.2d 888 (Cal. App. 4 Dist. 1992).....10, 15

Milk Wagon Drivers Union of Chicago v. Meadowmoor Dairies, Inc., 312 U.S. 287, 61 S.Ct. 552, 85 L.Ed. 836 (1941)..... 5

Morgan v. Woessner, ___ F.2d ___, 1992 WL 220237 (9th Cir., September 15, 1992).....10, 11

Pacific Mut. Life Ins. Co. v. Haslip, 111 S.Ct. 1032 (1991) ..... *passim*

Price v. Highland Community Bk., 932 F.2d 601 (7th Cir. 1991) 11

Principal Financial Group v. Thomas, 585 So.2d 816 (Ala. 1991), *cert. denied*, 112 S.Ct. 649, 116 L.Ed.2d 666 (1991)..... 12

Schad v. Arizona, 111 S.Ct. 2491 (1991)..... 15

TABLE OF AUTHORITIES – Continued

Page

State Farm Mutual Automobile Ins. Co. v. Duel, 324 U.S. 154, 65 S.Ct. 573, 89 L.Ed. 812 (1945) 3

Viking Ins. Co. of Wisc. v. Jester, 310 Ark. 317, ___ S.W.2d ___, 1992 WL 167469 (Ark. 1992) 12

Wollersheim v. Church of Scientology, 6 Cal.Rptr.2d 532 (Cal. App. 2 Dist. 1992) 10, 12

STATUTORY PROVISION

28 U.S.C. §1257 3

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ALLIANCE RESOURCES CORP.,
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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

The respondents Alliance Resources Corp., Tug Fork Land Company, George King, and Grover Goode respectfully request that this Court deny the petition for writ of certiorari, seeking review of the West Virginia Supreme Court of Appeals' opinion in this case. That opinion is reported at 419 S.E.2d 870 (W.Va. 1992).

STATEMENT OF FACTS

TXO's Statement of Facts is incomplete. The West Virginia court found TXO guilty of a "pattern of fraud, trickery and deceit." 419 S.E.2d at 890. Respondents incorporate the court's statement of facts found in the Opinion of the West Virginia Supreme Court of Appeals. 419 S.E.2d 870 (W.Va. 1992), Section I of the Opinion, pages 875-877. The court's statement of facts of the case may also be found in TXO's Petition for Writ of Certiorari, Appendix A, pp. 7a-12a.

REASONS WHY THE PETITION SHOULD BE DENIED

I. Any consideration of retroactivity of *Garnes v. Fleming Landfill*, 413 S.E.2d 897 (W.Va. 1991) was waived by TXO because it refused, until its petition for rehearing, to rely upon the procedural guidelines afforded by the state court in *Garnes*.

Following this Court's decision in *Pacific Mut. Life Ins. Co. v. Haslip*, 111 S.Ct. 1032 (1991) the West Virginia Supreme Court of Appeals set forth in *Garnes v. Fleming Landfill*, supra, procedural factors to consider in reviewing punitive damages awards. Additionally, in *Garnes*, the West Virginia Supreme Court required that parties, upon appeal, "must address each and every factor set forth in Syllabus Points 4 and 5 . . . with particularity, summarizing the evidence presented to the jury on the subject or to the trial court at the post-judgment review stage. Assignments of error related to a factor not specifically addressed in the petition will be deemed waived as a matter of state law." 413 S.E.2d at 910.

TXO refused to do so, "for the very simple reason that evidence without proper jury instructions will not meet the requirements of *Fleming*." (*See*, Respondents' Appendix A, infra.) Therefore, TXO waived any error relating to procedural due process as set out in *Garnes* by the high court of West Virginia.

II. TXO failed to raise the issue below of whether *James B. Beam Distilling Co. v. Georgia*, 111 S.Ct. 2439 (1991) accorded it retroactive due process rights.

In its petition to this Court, TXO now contends, for the first time, *James Beam* is applicable to this case and required the West Virginia Supreme Court of Appeals to apply retroactively *Garnes* and *Haslip*. However, this issue was never raised in the state court. Citation to *James Beam* appears nowhere in the record, briefs, or decision below. TXO could have raised the issue in its appeal, and certainly was required to have done so in its petition for rehearing, which was summarily denied by the West Virginia Supreme Court of Appeals. *See*, TXO App., 77a. Therefore, the retroactivity argument TXO now attempts to raise was "not pressed or passed upon" below. 28 U.S.C. §1257; *Bankers Life & Casualty Co. v. Crenshaw*, 486 U.S. 71, 108 S.Ct. 1645, 100 L.Ed.2d 62 (1988); *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983); *State Farm Mutual Automobile Ins. Co. v. Duel*, 324 U.S. 154, 65 S.Ct. 573, 89 L.Ed. 812 (1945); *Crowell v. Randell*, 10 Pet. 368, 9 L.Ed. 458 (1836); *McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. 430, 60 S.Ct. 670, 84 L.Ed. 849 (1940).

III. Notwithstanding TXO's failure to rely upon it below, *James Beam* is inapposite for two reasons:

A. *Haslip* did not create new federal law or procedure;

B. The decision of the West Virginia Supreme Court of Appeals in *Garnes* was limited to state procedural factors relative to punitive damages.

A. *Haslip did not create new federal law or procedure:* Relying upon the Commerce Clause of the United States Constitution, this Court in *Bacchus Imports, Ltd. v. Dias,* 468 U.S. 263, 104 S.Ct. 3049, 82 L.Ed.2d 200 (1984) was concerned about discrimination by states in exercise of their taxing authority. *Bacchus* held states could not discriminate against imported as opposed to local alcoholic products. *James Beam* held the new federal rule created in *Bacchus* must be applied retroactively. Thus, *James Beam* is inapposite to the facts of this case because *Haslip* did not create new federal law. Accepting the historic common law method of assessing punitive damages, 111 S.Ct. at 1043, "as long as the discretion is exercised within reasonable constraints" 111 S.Ct. 1044, *Haslip* merely held the Fourteenth Amendment applies to punitive damages. *Haslip* created no new federal law or procedure. The Court said these historic procedures accorded due process. Therefore, *James Beam* is not pertinent to the review of punitive damages.

B. *The decision of the West Virginia Supreme Court of Appeals in Garnes was limited to state procedural factors relative to punitive damages:* TXO asserts the West Virginia court "announced new procedural guidelines to bring

West Virginia's punitive damages scheme into compliance with federal law." TXO Petition for Certiorari, p. 18. After having created this alleged new constitutional right in *Garnes,* TXO further contends the court denied it such rights in this instance. Finally, TXO now contends this Court should grant its petition for certiorari under the auspices of *James Beam* and that this Court require a state court to apply its own state procedural guidelines retroactively.

The West Virginia court in *Garnes* did not create a new federal constitutional right. The court merely "set out a new system for the review of punitive damages awards in West Virginia." 413 S.E.2d at 908. This Court in *Browning-Ferris v. Kelco Disposal,* 492 U.S. 257, 278, 109 S.Ct. 2922, 106 L.Ed.2d 219, 240 (1989) stated, "where state law provides the basis of decision, the propriety of an award of punitive damages for the conduct in question, and the factors the jury may consider in determining their amount, are questions of state law." *See, also, Milk Wagon Drivers Union of Chicago v. Meadowmoor Dairies, Inc.,* 312 U.S. 287, 61 S.Ct. 552, 85 L.Ed. 836 (1941). The West Virginia Supreme Court of Appeals in *Bradley v. Appalachian Power Co.,* 256 S.E.2d 879, 887 (1979) said, quoting Justice Cardozo in *Great Northern Railway v. Sunburst Oil & Refining Co.,* 287 U.S. 358, 364, 53 S.Ct. 145, 148, 77 L.Ed. 360, 366 (1932):

> We think the Federal Constitution has no voice upon the subject. A state in defining the limits of adherence to precedent may make a choice for itself between the principle of forward operation and that of relation backward. It may say that decisions of its highest court, though later

> overruled, are law none the less for intermediate transactions. . . .

Justice Kennedy, in his concurrence in *Haslip*, noted this Court does "not have the authority, as do judges in some of the states, to alter the rules of the common law respecting the proper standard for awarding punitive damages and the respective roles of the jury and the court in making that determination." 111 S.Ct. at 1056. Therefore, the West Virginia Supreme Court of Appeals' procedure, under the facts of this case, does not raise substantial federal issues.

IV. There is no reason for this Court to revisit the punitive damages issue in light of the Fourteenth Amendment only one year after deciding *Pacific Mut. Life Ins. Co. v. Haslip*, ___ U.S. ___, 111 S.Ct. 1032, 113 L.Ed.2d 1 (1991).

This Court, in *Haslip*, held the historic "common-law method of assessing punitive damages is not so inherently unfair as to deny due process. . . . ," 111 S.Ct. at 1043, where the jury's discretion is not unlimited followed by reasonable trial and appellate court review. The Court specifically rejected the same argument TXO makes in this case – that the verdict be held an unconstitutional denial of due process based on the disparity between compensatory and punitive damages. This Court wisely recognized that "under the law of most States, punitive damages are imposed for the purposes of retribution and deterrence. . . . " 111 S.Ct. at 1044. Recognizing that to set a fixed ratio between compensatory and punitive damages would defeat the social goals of punitive damages

and result in innumerable injustices, Justice Blackmun, speaking for the majority said:

> We need not, and indeed we cannot, draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case. We can say, however, that general concerns of reasonableness and adequate guidance from the court when the case is tried to a jury properly enter into the constitutional calculus.

111 S.Ct. at 1043.

Contrary to the representation of TXO, Petition, p. 7, the Court did not mandate state or federal courts adopt any specific procedures, including Alabama's, regarding jury instructions, post-trial or appellate review. In fact, Justice Scalia noted that, historically, "no particular procedures were deemed necessary to circumscribe a jury's discretion regarding the award of such damages or their amount." 111 S.Ct. at 1048. Similarly, Justice Kennedy was concerned that rules of "certain and specific content" may have an effect of yielding "uniformity at the expense of considerations of fairness in the particular case. . . . These features of the jury system for assessing punitive damages discourage uniform results, but nonuniformity cannot be equated with constitutional infirmity." 111 S.Ct. at 1055.

State and federal courts are now reviewing cases in light of the guidance of *Haslip* and, where appropriate, are applying additional procedural safeguards. See citations infra, pp. 9-10. The time is not ripe for this Court to revisit due process of punitive damage award procedures of another jurisdiction.

V. Notwithstanding TXO's failure to rely upon the procedures of *Garnes* below until its petition for rehearing, the West Virginia Supreme Court of Appeals reviewed the punitive damages award in accordance with the guidelines of *Garnes* and *Haslip*, and found the verdict supported by the evidence and in accordance with state law.

In its petition for certiorari, TXO contended it did not receive due process protection, alleging inadequate jury instructions, post-trial and appellate review below. TXO's representation is inaccurate. There is no substantial federal issue as to whether TXO was accorded due process protection by the West Virginia state courts.

In this instance, TXO received due process of law protection. In fact, the instructions received by the jury below were at least as constraining as those received in *Haslip*, 111 S.Ct. 1037, n.1. (*See*, Respondents' Appendix B, containing Instruction 6A given to the jury.)

TXO was not denied due process in the post-trial review. Although the trial court did not make written findings of fact specifically addressing the factors used in Alabama, it did review all of the contentions made by TXO's counsel in its motion to set aside the verdict or, in the alternative, remit a portion of the punitive damages award. The record of the post-trial hearing on TXO's motion reflects that the trial judge "read everything you sent down here," referring to TXO's post-trial brief consisting of "45 pages in length." (TXO, App. 56a-57a). Furthermore, the record reflects that many of the issues were briefed and ruled upon by the court at the pretrial stage. (TXO, App. 56a). During the post-trial hearing, the

trial court pointed to the reprehensibility of TXO's fraudulent conduct:

> What could be more egregious than the vice president of a company saying, well, testifying and saying that he knew all along that this property belonged to Tug Fork?
>
> (TXO, App. 66a)

Therefore, even though this case was tried before the West Virginia Supreme Court announced factors for the trial court to consider during post-trial review of punitive damages awards, the trial court in this case considered multiple *Garnes* factors such as the reprehensibility of TXO's intentional misconduct, the likelihood of grievous harm, and the reasonableness of the amount in view of TXO's substantial net worth.

The fact that the trial court did not set forth on the record its reasons for denying TXO's post-trial motions was not held by the West Virginia appellate court to deprive TXO of due process. 419 S.E.2d at 875. Similarly, most other courts which have considered what due process requires under the guidelines of *Haslip* have held Alabama's procedure is not the only procedure that satisfies due process. *Glasscock v. Armstrong Cork Co.*, 946 F.2d 1085, 1098 (5th Cir. 1991) *cert. denied*, 112 S.Ct. 2439 (1991), ("The Texas scheme differs in at least two respects from the Alabama procedure. Texas trial courts are not required to justify their review of punitive damage awards in the record."); *Hess Oil Virgin Island Corp. v. HOVIC, Amerada Hess Corp.*, ___ F.2d ___, 1992 WL 228875 (3rd Cir. September 19, 1992) (" . . . federal post-trial review under Rules 50 and 59 and federal appellate

review of a jury award provide sufficient constraint on a jury's discretion to satisfy the requirements of due process.") *Morgan v. Woessner*, ___ F.2d ___, 1992 WL 220237 (9th Cir. September 15, 1992) (The federal court's review of punitive damages awards, under 42 U.S.C. §1983 satisfied due process.); *Eichenseer v. Reserve Life Ins. Co.*, 934 F.2d 1377, 1385 (5th Cir. 1991) ("As long as there is some meaningful procedural assurance that the amount of the award is not an impulsive reaction to the wrongful conduct of the defendant, the award survives the procedural protection aspect of the due process analysis in *Haslip*."); *Las Palmas Assoc. v. Las Palmas Center*, 1 Cal.Rptr.2d 301 (Cal. App. 2 Dist. 1991); *MGW, Inc. v. Fredricks Development Corp.*, 6 Cal.Rptr.2d 888 (Cal. App. 4 Dist. 1992); *Wollersheim v. Church of Scientology*, 6 Cal.Rptr.2d 532 (Cal. App. 2 Dist. 1992); *Hilgedick v. Koehring Finance Corp.*, 8 Cal.Rptr.2d 76 (Cal. App. 1 Dist. 1992).

Additionally, during its appellate review of this case, the West Virginia Supreme Court said it would be "especially diligent in our review of any punitive damages awards entered before *Garnes* was decided." 419 S.E.2d at 886. In conducting this comprehensive review, the court referred to *Garnes* a total of twenty-two times and to *Haslip* a total of eight times. The court said:

> In applying the *Garnes* "reasonable relationship" test to the case before us, we look to: (1) the potential harm that TXO's actions could have caused; (2) the maliciousness of TXO's actions; and (3) the penalty necessary to discourage TXO from undertaking such endeavors in the future. The type of *fraudulent* action *intentionally* undertaken by TXO in this case could potentially cause millions of dollars in damages to other victims. As for the reprehensibility of TXO's conduct, we can say no more than we have already said, and we believe the jury's verdict says more than we could say in an opinion twice this length. Just as important, an award of this magnitude is necessary to discourage TXO from continuing its pattern and practice of fraud, trickery and deceit.

419 S.E.2d at 889-890.

The court also considered and approved the trial judge admitting into evidence the net worth of TXO Division of USX, which is between $2.2 and $2.5 billion, 419 S.E.2d at 890, and evidence of other similar bads acts by TXO. 419 S.E.2d 883-86.

In reviewing this case under all the *Garnes* factors, the court looked to TXO's net worth to determine if the punitive damages were reasonable or excessive, just as the jury and trial court had earlier done. The punitive damages represent less than one-half of one percent of the worth of the TXO Division. A number of other courts have looked to the worth of the perpetrator in answering reasonableness of punitive damages. *Hess Oil Virgin Island Corp. v. HOVIC, Amerada Hess Corp.*, ___ F.2d ___, 1992 WL 228875 (3rd Cir. Virgin Islands, September 19, 1992); *Morgan v. Woessner*, ___ F.2d ___, 1992 WL 220237 (9th Cir. Cal., September 25, 1992); *Price v. Highland Community Bk.*, 932 F.2d 601 (7th Cir. 1991); *Eichenseer v. Reserve Life Ins. Co.*, supra; *Cash v. Beltmans North America Co., Inc.*, 900 F.2d 107, n.3 (7th Cir. 1990) ("typical ratio for a punitive damage award to a defendant's net worth may

be around one percent."); *Viking Ins. Co. of Wisc. v. Jester*, 310 Ark. 317, ___ S.W.2d ___, 1992 WL 167469 (Ark. 1992).

As part of its review of this award, the West Virginia court also made a detailed comparative analysis of verdicts from other jurisdictions based upon conduct of the defendant, compensatory and punitive damages. The comparison revealed several other instances where courts found the evidence warranted punitive damages verdicts which also represented large disparities between compensatory and punitive damages. In *TXO*, the court made specific reference to *Principal Financial Group v. Thomas*, 585 So.2d 816 (Ala. 1991) *cert. denied*, ___ U.S. ___, 112 S.Ct. 649, 116 L.Ed.2d 666 (1991) (750:1 ratio); *Eichenseer v. Reserve Life Ins. Co.*, supra, (500:1 ratio); and *Hospital Authority of Gwinnett Co. v. Jones*, 261 Ga. 613, 409 S.E.2d 501 (1991), *cert. denied*, 112 S.Ct. 1176 (1992) (260:1 ratio). TXO, 419 S.E.2d 888-89; 894-95. Like West Virginia's court did in this instance, other courts have made comparative analyses with other punitive damages verdicts. *Hess Oil Virgin Island Corp. v. HOVIC, Amerada Hess Corp.*, supra; *General Motors v. Johnston*, 592 So.2d 1054 (Ala. 1992); *Hilgedick v. Koehring Finance Corp.*, 8 Cal.Rptr.2d 76 (Cal. App. 1 Dist. 1992); *Wollersheim v. Church of Scientology*, 6 Cal.Rptr.2d 532 (Cal. App. 2 Dist. 1992).

After having been "especially diligent in our review," 419 S.E.2d 886, West Virginia's highest court found no error by the trial court, concluded the verdict was correct, and affirmed. TXO alleges this, too, was a denial of due process, contending the appellate court should have remanded this case to the trial court, as it had earlier in *Garnes*. However, both cases stand on their own facts, and both are quite different. *Garnes* was reversed and

remanded by the West Virginia Supreme Court because it overruled prior case law "to the extent that it stands for the proposition that a jury may return an award for punitive damages without finding *any* compensatory damages." 413 S.E.2d 908. Since the jury in *Garnes* awarded no compensatory damages, a new trial was indicated. In the instant case, the jury returned a compensatory damages verdict. Therefore, there was no reason for the appellate court to remand this case to the trial court, as had been necessary in *Garnes*. The appellate court found the trial court's conduct of the trial and the post-trial review were adequate and the verdict was not excessive.

TXO also alleges *Garnes* required the court to have remanded this case for a new trial because the jury was not instructed punitive damages should bear a reasonable relationship to compensatory damages. However, TXO omits an important exception stated in *Garnes*. In *Garnes*, the court said "where the actual harm was minimal but the potential harm was tremendous, a jury may reasonably find punitive damages commensurate with the potential harm." 413 S.E.2d at 908. The appellate court found this exception applied under the facts of the instant case. The court specifically rejected TXO's argument that it should draw a mathematical bright line between compensatory and punitive damages. To do so would limit the state's ability to use punitive damages to control socially unacceptable misconduct in some cases. The court said:

> Just as we recognized in *Garnes* that there can be no mathematical bright line relationship between punitive damages and compensatory

> damages, we cannot simply examine these nine criteria seriatim, awarding a certain number of points to each. The *Garnes* factors are interactive and must be considered as a whole when reviewing punitive damages awards.

419 S.E.2d at 887.

The court went on to label TXO's conduct as "mean," as opposed to "stupid," citing examples of each as justification for the larger award. The court said, "[a]ccordingly, we find that in cases where the defendant has intentionally committed mean-spirited and harmful acts (especially when the provable compensatory damages are small, but the potential of harm is great), even punitive damage 500 times greater than compensatory damages are not per se unconstitutional under *Haslip* and *Garnes*." 419 S.E.2d at 889.

TXO contends the West Virginia court's use of "mean/stupid" conduct is void for vagueness. However, the majority explained its analysis. This Court, in *Haslip*, rejected a similar void for vagueness argument. 111 S.Ct. 1046, n.12. This argument likewise raises no substantial issue for this Court.

In summary, in spite of TXO's own failures to raise issues below, it received all the protection of due process to which it is entitled. The review given to the verdict against TXO below is greater than accorded most wrongdoers. TXO may complain about the result, but it has no constitutional basis for this Court to grant its petition for writ of certiorari. As stated, the jury was reasonably constrained and the trial court's review was adequate, as

the appellate court so found. Furthermore, the court conducted a complete review and considered all the *Garnes* procedural guides. That additional protection assured TXO of due process. *MGW, Inc. v. Fredricks*, supra.

VI. The judgment of the West Virginia Supreme Court of Appeals should not be reversed or remanded under the doctrine of harmless error.

Even assuming, *in arguendo*, this case should have been remanded by the State Supreme Court for whatever reason, considering the limiting nature of the jury instructions, the post-trial review, and the extensive review of the appellate court, any error is harmless and not a denial of due process. *Arizona v. Fulminante*, 111 S.Ct. 1246 (1991) (error in admitting coerced confession in capital case harmless); *Schad v. Arizona*, 111 S.Ct. 2491 (1991) (due process satisfied, although jury was not required to agree to which alternative charge of murder of which defendant was guilty.)

CONCLUSION

This Court should deny TXO's petition for writ of certiorari.

Respectfully submitted,

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October 19, 1992

APPENDIX A

Page 33 Of Petitioner's Reply Brief Filed In The West Virginia Supreme Court Of Appeals.

* * *

carefully explained to a jury. Syl. Pt. 3. Two of these factors are that punitive damages should bear (1) a reasonable relationship to the harm that is likely to occur from the defendant's conduct as well as to the harm that actually has occurred, and (2) a reasonable relationship to compensatory damages. The jury in this case received no such instructions. See Defendant's (Appellees') Instruction No. 6A, Tr. 737.

The Appellees devote some 15 pages of their brief to sketching what they believe is the evidence in the record on the five mandatory factors (Syl. Pt. 3) and four discretionary factors (Syl. Pt. 4) set forth in *Fleming* which guide or may guide a jury in assessing the amount of punitive damages. Appellees' Brief, 54-69. TXO will not respond to the Appellees' sketched evidence for the very simple reason that evidence without proper jury instructions will not meet the requirements of *Fleming*.[10]

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[10] TXO also does not agree with appellees' statement of the evidence. For instance, the state at page 69 of their brief that "since the judgment below, TXO has offered $400,000.00 to settle this case." They fail to mention that after TXO made this initial offer, the appellees wrote and said they were not interested in discussing a settlement. They only agreed to meet with TXO after repeated requests. When the parties finally met, the appellees offered to "settle" for $11,300,000.00 and indicated no flexibility in that demand.

C. The punitive award of $10 million should be set aside because the trial court did not utilize the standards required by *Fleming* for review of the jury's award and thereby violated TXO's rights under the Due Process Clause.

Fleming establishes nine standards (those set forth in Syl. Pt. 3 are whereby a trial court is to review a punitive award. There is no evidence in record that the trial court utilized any standard in reviewing the award. If the

* * *

APPENDIX B

Instruction 6A Given To The Jury. Trial Transcript, Page 737.

* * *

In addition to actual or compensatory damages, the law permits the jury, under certain circumstances, to make an award of punitive damages, in order to punish the wrongdoer for his misconduct, to serve as an example or warning to others not to engage in such conduct and to provide additional compensation for the conduct to which the injured parties have been subjected.

If you find from a preponderance of the evidence that TXO Production Corp. is guilty of wanton, wilful, malicious or reckless conduct which shows an indifference to the right of others, then you may make an award of punitive damages in this case.

In assessing punitive damages, if any, you should take into consideration all of the circumstances surrounding the particular occurrence, including the nature of the wrongdoing, the extent of the harm inflicted, the intent of the party committing the act, the wealth of the perpetrator, as well as any mitigating circumstances which may operate to reduce the amount of the damages. The object of such punishment is to deter TXO Production Corp. and others from committing like offenses in the future. Therefore the law recognizes that to in fact deter such conduct may require a larger fine upon one of large means than it would upon one of ordinary means under the same or similar circumstances.

Leach v. Biscayne Oil and Gas Co., Inc., 289 S.E.2d 197

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